

# Climate Change and the Legal Framework for Settlement Relocation in the South Pacific

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# CLIMATE CHANGE AND RELOCATION IN THE SOLOMON ISLANDS



# Categories of Land in the South Pacific

	Public <sup>a</sup>	Freehold <sup>b</sup>	Customary
Cook Islands	Some	Little	95%
Fiji	4%	8%	88%
Federated States of Micronesia	35%	<1%	65%
Kiribati	50%	<5%	>45%
Marshall Islands	<1%	0%	>99%
Nauru	<10%	0%	>90%
Niue	1.5%	0%	98.5%
Palau	Most	Some	Some
Papua New Guinea	2.5%	0.5%	97%
Samoa	15%	4%	81%
Solomon Islands	8%	5%	87%
Tokelau	1%	1%	98%
Tonga	100%	0%	0%
Tuvalu	5%	<0.1%	95%
Vanuatu	2%	0%	98%

Source: AusAID, Making Land Work: Reconciling Customary Land and Development

# DEALINGS IN CUSTOMARY LAND

	Is the sale or transfer of customary land prohibited? <sup>a</sup>	Is leasing permitted? <sup>b</sup>
Cook Islands	Yes, except to the state	Yes, after registration as native freehold
Fiji	Yes, except to the state	Yes, but only through the Native Land Trust Board
Federated States of Micronesia	No	Yes
Kiribati	Yes, except to the state and community organisations	Yes, with court and ministerial approval
Marshall Islands	No	Yes
Nauru	No	Yes, with approval from the President
Niue	Yes, except to the state	Yes
Palau	No	Yes
Papua New Guinea	Yes, except to the state	No <sup>c</sup>
Samoa	Yes, except to the state	Yes, with ministerial approval
Solomon Islands	Yes, except to the state	No <sup>d</sup>
Tokelau	Yes, except to the state	Yes, with government approval
Tuvalu	Yes, except to the state, local government council or a cooperative	Yes, with ministerial approval
Vanuatu	Yes, except to the state	Yes <sup>e</sup>

Source: AusAID, Making Land Work: Reconciling Customary Land and Development (Based on Information Provided by Professor Don Patterson)

# Custom or Law: The Two Choices for Relocation Agreements

## A. LAW: THE STATE AS INTERMEDIARY



# Custom or Law: The Two Choices for Relocation Agreements

## B. CUSTOMARY AGREEMENT

Customary Group (Leader)  Relocated Group (Leader)

# THE GOVERNING LAW OF RELOCATION AGREEMENTS

## A. CUSTOMARY LAW

### 1. *Advantages*

- Kinship/Family Relations
- Cultural Understanding
- Self-Enforcing

### 2. *Disadvantages*

- Disputes
- Uncertainty
- Agency (Leader) Abuses

# THE GOVERNING LAW OF RELOCATION AGREEMENTS

## B. LAW

### 1. *Disadvantages of Current Legal Regime in the South Pacific*

- Expense
- Capacity
- Political Resistance
- Enforcement Problems
- Demographic Growth

# OPTIONS FOR DISCUSSION A

## **Relocation Guidelines**

- Kinship
- Church Support
- Whole of Government
- Donor Reluctance: No International Templates

## **Law Reform: Leases by Customary Groups**

- Agency Authority
- Identifying Landholders
- Recording Information

# OPTIONS FOR DISCUSSION B

## **Standard Form Agreements**

- Water
- Gardens
- Marine Resources
- Disputes
- Population Growth

## **Integrating Land Audits with Hazard Mapping**

- Integrating social and geodetic data